

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVID A. WILLIG, by his Guardian Beverly Willig,
and
BEVERLY WILLIG,

Plaintiffs,

Case No. 14-C-_____

and

(Brown County Case No.: 14-CV-1120)

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Involuntary Plaintiff,

vs.

ACE AMERICAN INSURANCE COMPANY,
GREEN BAY DRESSED BEEF, LLC,
and
AMERICAN FOODS GROUP, LLC,

Defendants.

NOTICE OF REMOVAL

Defendants Ace American Insurance Company, Green Bay Dressed Beef, LLC and American Foods Group, LLC, (collectively known as the “Defendants”), by their attorneys, The Law Firm of Conway, Olejniczak & Jerry, S.C., hereby give notice of removal of this civil action filed in the Circuit Court for Brown County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin, Green Bay Division. The grounds of removal are as follows:

1. This civil action was commenced in Branch V of the Circuit Court for Brown County, Wisconsin, on August 4, 2014, and assigned Brown County Case No. 14-CV-1120.

2. Service of the Summons and Complaint was made on the Defendants on August 14, 2014. This action is timely removed within thirty (30) days after service. 28 U.S.C. § 1446(b).

3. The United States District Court has subject-matter jurisdiction over the action because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1332(a)(1).

4. Plaintiffs David A. Willig and Beverly Willig are individuals who are citizens of New York.

5. Involuntary Plaintiff Liberty Mutual Fire Insurance Company, Inc. (“Liberty”), is a corporation organized and existing under the laws of Massachusetts with its principal place of business at Boston, Massachusetts, and is thus a citizen of Massachusetts. 28 U.S.C. § 1332(c)(1).

6. While the Complaint identifies Liberty as a defendant, Liberty, a worker’s compensation carrier subrogated to the extent of its payments to or on behalf of Plaintiff David A. Willig, is properly realigned as an involuntary plaintiff. Am. Motorists Ins. Co. v. Trane Co., 657 F.2d 146, 149 (7th Cir. 1981) (“Where jurisdiction is based on diversity of citizenship, the court may ascertain whether the alignment of the parties as plaintiff and defendant conforms with their true interests in the litigation. Realignment is proper when the court finds that no actual, substantial controversy exists between parties on one side of the dispute and their named opponents[.]”) (internal citation omitted); see also Wis. Stat. § 102.29 (“The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death ... Each shall have an equal voice in the prosecution of said claim, and any

disputes arising shall be passed upon by the court before whom the case is pending.”); Lund v. Universal Furniture Indus., Inc., 07-C-237-S, 2007 WL 5595963 (W.D. Wis. June 11, 2007)

(“Wisconsin’s statutory worker’s compensation scheme clearly provides that whatever differences there may be between worker and insurer, their interests are precisely aligned when it comes to prosecuting claims against potential tortfeasors who caused the employee’s injury.”).

7. Defendants Ace American Insurance Company, Green Bay Dressed Beef, LLC, and American Foods Group, LLC, are citizens of Arizona, Colorado, Florida, Kentucky, Minnesota, Missouri, and Pennsylvania, as explained in Paragraphs 8-10, below.

8. Defendant Ace American Insurance Company is a corporation organized and existing under the laws of Pennsylvania with its principal place of business at Philadelphia, Pennsylvania, and is thus a citizen of Pennsylvania.

9. Defendant Green Bay Dressed Beef, LLC, is a limited liability company whose members are American Foods Group, LLC (whose citizenship is set forth in Paragraph 10, below) and Rosen’s Diversified, Inc., a corporation organized and existing under the laws of Minnesota with its principal place of business at Fairmont, Minnesota. Green Bay Dressed Beef, LLC, is thus a citizen of Minnesota as well as the states of which American Foods Group, LLC, is a citizen. Hicklin Eng’g, L.C. v. Bartell, 439 F.3d 346, 347 (7th Cir. 2006) (“The citizenship of a limited liability company is that of its members[.]”).

10. Defendant American Foods Group, LLC, is a limited liability company whose members are Rosen’s Diversified, Inc. (whose citizenship is set forth in Paragraph 9, above) and RDI Shareholder, LLC. RDI Shareholder, LLC, is a limited liability company whose members comprise sixteen (16) trusts, the trustees of which are citizens of Arizona, Colorado, Florida,

Kentucky, Minnesota, and Missouri.¹ American Foods Group, LLC, is thus a citizen of Arizona, Colorado, Florida, Kentucky, Minnesota, and Missouri. Guar. Nat. Title Co., Inc. v. J.E.G. Associates, 101 F.3d 57, 59 (7th Cir. 1996) (“For purposes of § 1332, the citizenship of a trust is the citizenship of its trustee.”) (citing Navarro Savings Ass'n v. Lee, 446 U.S. 458 (1980)).

11. The amount in controversy exceeds \$75,000.00.

12. Defendants are contemporaneously filing a Notice of Filing of Notice of Removal, along with a copy of the Notice of Removal, with the Clerk of the Circuit Court of Brown County, Wisconsin and serving written notice of the same on counsel for the Plaintiffs and Involuntary Plaintiff. 28 U.S.C. § 1446(d).

13. Copies of all pleadings, process and orders served upon Defendants in this action are attached hereto in accordance with 28 U.S.C. § 1446(a).

WHEREFORE, Defendants represent that they have complied with the provisions of law and given notice that this action stands removed from the Circuit Court for Brown County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin, Green Bay Division.

Dated this 25th day of August, 2014.

Respectfully submitted,

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Defendants, Ace American Insurance Company,
Green Bay Dressed Beef, LLC and American Foods Group, LLC

By: s/T. Wickham Schmidt
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¹ The specific identities of the trusts, the individual trustees, and their citizenship, are set forth on Confidential Exhibit A, filed under seal contemporaneously herewith.

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CERTIFICATE OF MAILING

I hereby certify that on the 25th day of August, 2014 a true and correct copy of the above and foregoing was served, via first class mail, postage prepaid, to:

Attorney Edward J. Vopal
Attorney Ralph J. Tease, Jr.
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